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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/654,228      09/03/2003      Michael G. Hayek      P127C      4744

27752      7590      04/16/2007  
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EXAMINER
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SCHLIENTZ, NATHAN W

ART UNIT	PAPER NUMBER
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1616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS      04/16/2007      PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/654,228

**Applicant(s)**

HAYEK ET AL.

**Examiner**

Nathan W. Schlientz

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

The examiner for your application in the USPTO has changed. Examiner Nathan Schlientz can be reached at 571-272-9924.

### ***Status of Claims***

Claims 1-3 are pending and examined herein on the merits. No claim is allowed at this time.

### ***Double Patenting***

The rejection of Claims 4-6 under 35 U.S.C. 101 as claiming the same invention as that of Claims 1-3 of prior U.S. Patent No. 6,641,836, is hereby **withdrawn** in view of the Applicant's preliminary amendment filed 3 September 2003 wherein Claims 4-6 were cancelled.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 1616

1. Claims 1 and 2 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,133,317 (hereinafter Hart) for the reasons made of record in the previous Official Action.
2. The rejection of Claims 1-3 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,141,755 (hereinafter Weisman) is hereby **withdrawn** by the examiner because Weisman does not disclose any beneficial reason for adding garlic, other than as a flavoring.
3. Claim 1 stands rejected under 35 U.S.C. 102(a) and 102(e) as being anticipated by U.S. Patent No. 5,965,153 (hereinafter Allen) for the reasons made of record in the previous Official Action.
4. Claim 1 stands rejected under 35 U.S.C. 102(a) and 102(e) as being anticipated by U.S. Patent No. 5,976,549 (hereinafter Lewandowski) for the reasons made of record in the previous Official Action.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. The rejection of Claims 1-3 under 35 U.S.C. 103(a) as being unpatentable over Weisman is hereby **withdrawn** by the examiner.

2. The rejection of Claim 1 under 35 U.S.C. 103(a) as being unpatentable over Allen is hereby **withdrawn** by the examiner.
3. The rejection of Claim 2 under 35 U.S.C. 103(a) as being unpatentable over Lewandowski is hereby **withdrawn** by the examiner.
4. Claims 1 and 3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,156,355 (hereinafter Shields et al.) for the reasons made of record in the previous Official Action.
5. The rejection of Claim 2 under 35 U.S.C. 103(a) as being unpatentable over Shields et al. is hereby **withdrawn** by the examiner.

### ***Response to Arguments***

Applicant's Remarks filed 19 December 2006 have been fully considered but they are not persuasive.

1. Rejection of Claims 1-2 under 35 U.S.C. 102(e) as being anticipated by Hart.

The Applicant's argue on page 4 of the aforementioned Remarks that nowhere does Hart specifically teach the Applicant's claimed 1g to 10g of garlic per kg of diet to enhance immune response in a dog. However, the examiner respectfully directs attention to column 16, lines 11-15 where Hart discloses feeding a diet mixture containing 1 pound (lb) boiled carrots, 1 teaspoon garlic, ¼ cup parsley, and 1½ lb dry dog food. The amount of garlic and parsley are minimal compared to the weight of the carrots and dry dog food, thus resulting in approximately 2.5 lb total food (i.e. about 1.134 kg total dog food). One teaspoon of garlic is approximately 1 clove of garlic which

Art Unit: 1616

is approximately 3-5 g. Therefore, Hart discloses feeding a dog approximately 2.6-4.4 g of garlic per kg total dog food.

Hart also discloses that garlic is believed to fight infection, cancer, bacteria, virus, and heart disease (column 29, lines 58-59), as well as being high in oxalic acid, which is believed to assist the immune system to prevent, treat, and control tumors, growths, cancers, viral or bacterial diseases, chemical toxins, and the like (column 29, lines 46-55). The instant specification defines an effective amount as an amount of garlic, which, when fed to canines, provides antioxidant, anticancer, and immunomodulatory benefits (page 1, first paragraph in BACKGROUND OF THE INVENTION). Therefore, Hart discloses the 4 g of garlic per kg of pet food is used to assist in enhancing the immune systems ability to prevent, treat, and control various diseases, which is an effective amount to provide immunomodulatory benefits.

2. Rejection of Claim 1 under 35 U.S.C. 102(a) and 102(e) as being anticipated by Allen.

The Applicant's argue on page 5 of the aforementioned Remarks that Allen does not disclose any examples or particular amounts of garlic that would be effective to reduce non-seasonal shedding, much less disclose use of garlic for immune health. However, the examiner respectfully directs attention to column 2, lines 60-65, where Allen discloses that when taken properly, the supplement, of which garlic is a critical component, fosters healthy skin which includes the reduction or elimination of occurrences of fungus infections and seasonal dry skin. Also, Claim 1 of the instant application merely states the dog's diet includes an effective amount of garlic for a time

Art Unit: 1616

sufficient for said garlic to be absorbed by said dog. Again, the instant specification defines an effective amount as an amount of garlic, which, when fed to canines, provides antioxidant, anticancer, and immunomodulatory benefits (page 1, first paragraph in BACKGROUND OF THE INVENTION). It is apparent that oral administration of the supplement by Allen must be given in an effective amount for a time sufficient for the supplement to be absorbed by the dog in order to reduce or eliminate the occurrences of fungus on the skin. Thus, the amount of garlic given by Allen must be an effective amount to provide an enhancement of the immune response, because the immune system is responsible for maintaining healthy skin.

3. Rejection of Claim 1 under 35 U.S.C. 102(a) and 102(e) as being anticipated by Lewandowski.

The Applicant's argue on page 6 of the aforementioned Remarks that Lewandowski does not disclose any amounts of garlic, but rather only disclose an "effective amount" for reducing or eliminating bad breath, though never disclosing what such an "effective amount" might be. However, the examiner respectfully directs attention to column 2, lines 40-49, where Lewandowski discloses, "Garlic-related products exist in many forms such as bulbs, whole cloves, and minced, chopped, crushed, liquefied, extracted, dried, and roasted preparations. In addition to its desirable attributes as a food seasoning, garlic in its many forms is thought to have some therapeutic benefits. Relatedly, garlic is used for many things including lowering blood pressure, reducing blood cholesterol, promoting cardiovascular activity, soothing the respiratory system, relieving gas and indigestion, reducing yeast infections, and

Art Unit: 1616

providing a systemic insect repellent." Therefore, Lewandowski discloses the use of garlic in an effective amount for enhancing the immune response with respect to reducing yeast infections, as well as killing bacteria that cause bad breath.

4. Rejection of Claims 1 and 3 under 35 U.S.C. 103(a) as being unpatentable over Shields et al.

The Applicant's argue on page 11 of the aforementioned Remarks that Shields et al. do not provide any amounts or ranges of garlic in any of the compositions. However, the examiner respectfully directs attention to column 14, lines 52-54, where Shields et al. teach that garlic is thought to have some natural ability to inhibit growth of pathogenic organisms (i.e. enhance immune response to pathogens). Also, Shields et al. teach garlic as an ingredient present in their dog food formulations for non-sporting dogs, toy dogs, terrier dogs, working dogs, and hound dogs (Examples 1-5; and Claims 1-5). Again, the instant specification defines an effective amount as an amount of garlic, which, when fed to canines, provides antioxidant, anticancer, and immunomodulatory benefits (page 1, first paragraph in BACKGROUND OF THE INVENTION). Therefore, the garlic taught by Shields et al. is in an amount effective to inhibit growth of pathogenic organisms, which is an effective amount to enhance immune response.



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

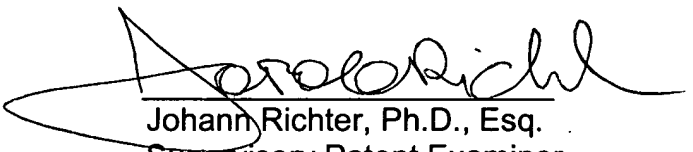
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan W. Schlientz whose telephone number is 571-272-9924. The examiner can normally be reached on 8:30 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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